

Qualified Majority Voting and the Interests of the Czech Republic

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Summary

This paper analyses the results of the Convention debate and compares these results with the positions and interests of the Czech Republic as a small candidate country. It concentrates especially on the qualified majority voting (QMV) in the Council. The paper tries (1) to determine whether the proposed extension of QMV is in accordance with the interests of the Czech Republic. The extension of QMV is compared with a study carried out by the Prague Institute of International Relations. I also (2) compare the QMV mechanism agreed at the Convention with alternative plans (QMV rules under Nice Treaty, Commission proposal of double simple majority, and the 60:60 proposal). Finally, I sum up the merits of the draft constitution in the analysed areas from the point of view of the Czech Republic.

1. Introduction¹

The European Union faces presently a period characterised by double pressure: It is now awaiting the single biggest enlargement in its history. And, at the same time, it is going through a fundamental transformation, after which it should be better equipped to face future challenges. This transformation should prepare the Union for functioning with a nearly double number of Member States. But it should also gain the necessary tools for increasing its effectiveness, legitimacy, and transparency both inside (towards its own citizens) and outside (to the world in general). A series of intergovernmental conferences tried to tune the functioning of the Union more precisely.

The work of the Convention can be understood as a logical consequence of this process. As both Amsterdam and Nice Treaties were not capable of solving the pressing problems of institutional balance in a comprehensive, all-acceptable and at the same time transparent way, the Convention has been seen by many as a panacea for all European illnesses.

It became, however, clear very soon that simple and transparent solutions are often not compromise solutions. Thus, two dividing lines emerged: The old clash of federalist vs. intergovernmentalist view of the Union and the new debate about big vs. small states and their positions in the institutional architecture of Europe.

The Czech Republic, though sometimes boasting that it is a “medium sized” country in European terms, clearly belongs to the camp of small countries. This is also the reason why the Czech Republic plays a quite active role in the group of the “like-minded” countries that, sometimes quite fiercely, fight against strengthening of the big Member States. The small states were nevertheless not very successful in this endeavour during the meetings of the Convention. Quite to the contrary, many delegates felt frustrated by the working method of the Presidium, which often did not listen to suggestion for amendments, even though they were proposed by majority of delegates.

The current Intergovernmental Conference is thus the event to which all Czech (and other small countries’) hopes are pinned. The Czech political representatives go to the IGC with an impressive “to-do” list. The list is topped by the formula “one country – one commissioner”; this requirement was named as priority number one during Czech PM

¹ The ideas presented in the paper are those of the author. They do not necessarily reflect the official policy of the Government of the Czech Republic.

Spidla's introductory speech at the IGC as well.² This and the obvious reluctance of big countries like Germany, France or the United Kingdom to reopen the question of the Council reform has caused that other sometimes not less important questions have receded into the background. This is the case of qualified majority voting in the Council.

In view of Spanish and Polish efforts to bring back the voting mechanism included in the Treaty of Nice, the other big countries and especially Germany have adopted a firm position towards this issue and reject any change to the newly agreed system. This no-change policy is, however, to be seen exactly in the context of the possible return to the overly complex Nice voting rules. So, a different change, which would still respect the demographic proportions of the Member States and would simultaneously be more transparent and simpler, is not altogether ruled out.

This analysis, therefore, aims at assessment of possible alternative models of QMV. I analyse the Czech interests in respect to the qualified majority voting. After describing the QMV debate in the Convention, I concentrate on both the possible extension of QMV and the voting mechanism itself and its (dis)advantages for the Czech Republic and for other small countries too. In the first part of the analysis, I use the data collected during a research carried out by three research fellows at the Institute for International Relations, Prague.³ In the other part, I discuss several alternative models of qualified majority and try to answer the question of blocking potential of small countries when using these different models.

2. The Convention debate and QMV

A vast majority of delegates to the Convention felt that generalisation of QMV would be appropriate because retaining the mechanism of unanimous voting would inevitably lead to blocking and possibly even a collapse of the Council. 15 Member States may still be able to find areas where everybody agrees with a new provision, thus making consensual decision-making workable. 25, or 27 MS, respectively, would hardly find a way through.

The discussion about the qualified majority voting in the Convention can be, in the same way as the discussion at the Nice Conference, divided in two specific debates: How to define the qualified majority and how to adjust (extend) the area of its application.

² Češi věří, že své požadavky prosadí (Czechs believe they can push through their requirements), Lidové noviny, 7. 10. 2003

³ Drulák, Königová, Kratochvíl, 2003

The need for a new definition of QMV seemed to be almost consensual during most of the debates. The triple majority, which was the result of the Nice IGC, was too complicated and its complexity did not allow it to be a good long-term solution for almost anyone. Therefore, one of the main objectives of the discussions in the Convention was to simplify the QMV and make the voting mechanism more transparent. Some countries, which profited from the Nice results, such as Spain and Poland, made objections to any changes from the very beginning to the very end (and even beyond). This caused fears of other countries that they might slip from the debate about what changes to introduce back to whether change the Nice results at all.

The solution presented by the Commission seemed to be the proposal with strongest support. The Commission brushed up its old proposal from the pre-Nice times and suggested the double simple majority which would consist of simple majority of Member States and simple majority of population.⁴ The Presidium of the Convention, however, did not wholly incorporate this proposal into the draft text: Instead, it accepted the requirement of big countries to increase the population criterion from 50 to 60 percent.⁵

After this move of the Presidium it was only natural that most amendments to the draft text came from small countries' delegates. The group of countries which opposed the Presidium proposal was made up largely out of small countries, among them Austria, the Benelux Countries, Finland, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Slovakia, and Slovenia.⁶ Greek delegates suggested a change exactly reflecting the Commission proposal⁷ and others pushed it even farther to the extreme. For example, Czech delegate Josef Zieleniec believed that qualified majority should consist of "at least 2/3 of Member States, representing the majority of the population of the Union."⁸

Michel Barnier and other members of the Commission also argued in detail against the Presidium proposal. They stressed the principle of transparency and pointed to numerous advantages of the simple double majority. Their main argument was nevertheless an intricate one: As any change adopted in the Convention should not cause decrease in effectiveness of QMV, and as the smallest possible qualified majority in terms of population could be reached

⁴ Suggestion for Amendment by Barnier et al., http://european-convention.eu.int/Docs/Treaty/pdf/417999/17terBarnier%20EN_FR.pdf

⁵ Draft Constitution, Part IV (before the revision of 13. 6.), <http://european-convention.eu.int/bienvenue.asp?lang=EN&Content=>

⁶ Halligan, 2003

⁷ Papandreou and Katiforis, <http://european-convention.eu.int/amendments.asp?content=417999&lang=EN>

⁸ Suggestion for Amendment by Josef Zieleniec, <http://european-convention.eu.int/Docs/Treaty/pdf/417999/17terZieleniecEN.pdf>

with about 57% of the Union's population according to the text of the Nice Treaty, there should be no increase of the population threshold.⁹

During the last month, in view of the deadlock in the negotiations about the new QMV rules, the idea of maintaining the status quo agreed on in Nice was revived. So, although most Member States were not content with this development, the discussion nevertheless turned from the debate about the models which would replace the old Nice voting mechanism to the discussion about the costs and benefits of replacing the Nice system. Eventually, the group of countries supporting the Nice status quo, lead by Spain and Poland, gained the support of several other countries represented at the Convention.

Some other big countries, especially the United Kingdom, slowly changed their attitudes towards more favourable judgement of the Nice QMV rules and did not back further changes in this area any more. Some of the big countries remembered that the Nice negotiations were seen as a big success of the French and British in the sense of keeping the German voting power in parity with the other big three. The Convention was obviously prepared to change this equilibrium in favour of Germany and here was an opportunity to change this stance. No wonder that the British delegate Peter Hain expressed satisfaction with the Nice arrangement and rejected its changes.¹⁰

The discussions about the extension of the qualified majority voting were not any easier. The only consensual result was the necessity to generalise the use of QMV in all areas where the constitutional treaty does not state otherwise. This was a clear sign of change of climate: The current wording of the Treaties almost always determines whether qualified majority voting or unanimity should be the voting rule in the particular situation. Now, the Presidium draft text clearly defined areas where unanimous decision-making is required, and for all other questions QMV would be the ordinary voting rule. Such generalisation of QMV was really consensual. Quite to the contrary, the extension of application of QMV itself remained a hotly contested issue during the whole Convention.

⁹ Suggestion for Amendment by Barnier et al., http://european-convention.eu.int/Docs/Treaty/pdf/417999/17terBarnier%20EN_FR.pdf The authors of the Amendment also point out that „since, with the system proposed for the Constitution, the weight of each Member State will be expressed directly in terms of population and no longer in votes, there is no longer any justification for the provision allowing confirmation that the votes of the Member States which constitute a qualified majority represent at least 62%.“ (Ibid.)

¹⁰ Suggestion for Amendment by P. Hain, <http://european-convention.eu.int/Docs/Treaty/pdf/417999/17terHain.pdf>

3. The Czech Republic (ČR) and the applicability of QMV

Every Member State, irrespective of its size, tried to determine those areas where unanimity was absolutely vital from its point of view. Similarly, the Candidate Countries were asked to formulate precisely their positions on the possible QMV extension. The candidates, however, answered such pleas with great difficulties because they had not had enough experience with protecting their interests in the complex web of interdependence of the European Union.

In addition, at first there were almost no signs of co-operation or at least co-ordination because the individual candidate countries were able to make only rough estimates of what the other candidates' positions in the discussed area would be. So, for a long time, no one was sure about the position of the candidate countries in this debate: Whether they will fiercely defend their rights or acquiesce to the demands of current (big) Member States.

The Czech Republic was no exception to this because the precise official Czech position remained unknown during most of the Convention work. The delegate of the Czech government, Mr. Jan Kohout made only several vague statements without specifying where QMV would be insurmountable obstacle for the Czechs and where the Czech position was only a starting point for further negotiations. It is true, Mr. Kohout welcomed the combination of QMV with co-decision in the EP in the Czech Government's Non-paper¹¹ but, again, he failed to specify the areas where this should apply.

The Czech Republic was, however, probably the first candidate country not only to realise the absence of a clear definition of its national interests in regard to QMV but also to try to improve the situation by having an extensive study carried out, which could give the country the required information about the transition from the unanimity to QMV and the impact on the ČR.¹²

Our research concentrated on provisions of the Treaty establishing the European Community. This is a very important qualification because by doing so, we left out some important, yet highly politically sensitive and divisive areas like foreign and security policy etc. We carried out the study in several stages: The first step was the identification of the articles where the extension of QMV is thinkable at all in short term. The second step was the preliminary assessment of the authors of the study and the third and the crucial one was

¹¹ Conv 485/03

¹² Drulák, Königová, Kratochvíl, 2003 (<http://www.iir.cz/cz/czcea/czet/analyzaQMV.pdf>).

holding a number of interviews with ministerial experts and officials responsible for the accession negotiations.

In the final step, we divided all articles in two groups depending on whether the ČR is for or against QMV in the discussed areas. The need for two more groups arose as well: The first contained those articles where the experts found some important arguments for QMV and some against the extension. In the last group, we put those areas largely irrelevant to the ČR.

Before the Nice Treaty, there were around 73 articles with unanimous voting to be found. The unanimity in some of these fields was politically so sensitive that the extension of QMV would be absolutely impossible. For this reason, the French and Portuguese Presidencies subsequently identified 46 cases¹³ where unanimity could be replaced by qualified majority and two other articles which could be deleted entirely. Knowing the results of the Nice IGC, we can subsume the items where the transition to QMV was possible under three groups:

1. The areas where the Nice IGC decided about transition to QMV immediately after the Treaty coming into force
2. The areas where QMV is explicitly considered a future possibility
3. The areas where extension of QMV was rejected.

The following list includes all articles we should concentrate our attention on, i.e. the third group (inclusive even those articles where the extension was only partial), and those articles from the second group where the transition to QMV was not exactly determined (e.g. some aspects of articles 67 or 137).

- Art. 18 /ex-Art. 8a Free movement of persons¹⁴
- Art. 42/ex-Art. 51 Measures in the field of social security
- Art. 47/ex-Art. 57 Mutual recognition of diplomas
- Art. 62/ex-Art. 73j Visa measures
- Art. 63/ex-Art. 73k Asylum measures, refugees
- Art. 66/ex-Art. 73n Administrative co-operation
- Art. 67/ex-Art. 73o Transitional provision (Court of Justice)

¹³ The list of the articles can be found at CONFER 4776/00

- Art. 71/ex-Art. 75 Necessary measures in the field of transport
- Art. 80/ex-Art. 84 Measures on transport
- Art. 93/ex-Art. 99 Harmonisation of indirect taxation
- Art. 133/ex-Art. 113 Common trade policy; implementation
- Art.137/ex-Art.118 Improvement of working conditions; minimum requirements; social measures
- Art. 151/ex-Art. 128 Co-operation in culture
- Art. 175/ex-Art. 130 The principle that the polluter should pay
- Art. 187/ex-Art. 136 Rules for the association
- A new article 256(a) Establishment of decentralised agencies
- Art. 296/ex-Art. 223 Security interests of the Member States
- Art. 300/ex-Art. 228 Agreements of the Community
- Art. 94/ex-Art. 100 Approximation of laws and other provisions¹⁵
- Art. 144/ex-Art. 121 Tasks delegated to the Commission (in social area)¹⁶

To these short-term priorities, we added some other provisions (from the TEC) which were not discussed under the French and Portuguese Presidencies:

- Art. 13 (1) Actions to combat discrimination
- Art. 19 (1) Right to vote (municipal elections and the elections to the EP)
- Art. 22 Extension of the rights of the citizens of the EU
- Art. 57 (2) Restrictions of the movement of capital
- Art. 88 (2) Compatibility of State aid with the rules of the Common Market
- Art. 105 (6) Specific tasks of the ECB
- Art. 107 (5) Changes of statute ESCB and ECB
- Art. 111 (1) Exchange rates
- Art. 123 (5) Abolition of derogation (from the common currency)
- Art. 139 (2) Social dialogue
- Art. 157 (3) Competitiveness of industry

¹⁴ The titles of are only approximate description of the articles and the areas where QMV was used as the official consolidated version does not include these titles. Cf. Consolidated Version of the Treaty Establishing the European Community, http://europa.eu.int/eur-lex/en/treaties/dat/ec_cons_treaty_en.pdf

¹⁵ Deletion of the article proposed.

¹⁶ Deletion of the article proposed. The article was not analysed in the study.

- Art. 190 (4) Elections to the EP according to a single procedure
- Art. 213 (1) Alterations of the number of members of the Commission
- Art. 221 Increases in the number of Judges
- Art. 222 Increases in the number of Advocates-General
- Art. 225 (2) Court of First Instance
- Art. 245 Statute of the Court of Justice, Rules of Procedure
- Art. 269 Own Resources
- Art. 290 Languages
- Art. 308 Measures to attain the objectives of the Community

In the second step (after preliminary estimates of the authors), the articles were consulted with ministerial experts and officials and corrected according to their views. (I marked with cursive those articles that do not belong to the short-term relevant provisions identified by the French and Portuguese Presidencies.)

Group 1: Arguments for QMV extension clearly dominate

- Art. 18 Free movement of persons
- Art. 42 Measures in the field of social security
- Art. 47(2) Mutual recognition of diplomas
- *Art. 57(2) Restrictions of the movement of capital*
- Art. 62 Visa measures
- Art. 63 Asylum measures, refugees
- Art. 67(5) Transitional provision (Court of Justice)
- Art. 71(2) Necessary measures in the field of transport
- Art. 80 Measures on transport
- *Art. 88(2) Compatibility of State aid with the rules of the Common Market*
- Art. 93 Harmonisation of indirect taxation
- Art. 94 Approximation of laws and other provisions
- Art. 133 Common trade policy
- Art. 137 Improvement of working conditions; minimum requirements; social measures (except 1c)
- *Art. 139 Social dialogue (except provisions related to 137 (1)c)*

- *Art. 157(3) Competitiveness of industry (or group 3)*
- *Art. 175(2) The principle that the polluter should pay*
- *Art. 213 (1) Alterations of the number of members of the Commission*
- *Art. 222 Increases in the number of Advocates-General*
- *Art. 290 Languages (or group 3)*
- *Art. 308 Measures to attain the objectives of the Community*

Group 2: The extension of QMV should be rejected

- *Art. 13(1) Actions to combat discrimination*
- *Art. 19(1) Right to vote (municipal elections and the elections to the EP)*
- *Art. 22 Extension of the rights of the citizens of the EU (or group 4)*
- *Art. 137 (1c) Improvement of working conditions; minimum requirements; social measures (except 1c)*
- *Art. 139 (measures related to 137 (1)c)*
- *Art. 190 (4) Elections to the EP according to a single procedure (or group 3)*
- *Art. 221 Increases in the number of Judges*
- *Art. 225 (2) Court of First Instance*
- *Art. 245 Statute of the Court of Justice, Rules of Procedure*
- *Art. 269 Own resources*
- *Art. 296(2) Security interests of the Member States (or group 4)*

Group 3: there are strong arguments both for and against QMV

- *Art. 66 Administrative co-operation (or group 4)*
- *300 Agreements of the Community*

Group 4: the articles which are largely irrelevant for the ČR

- *Art. 151(5) Co-operation in culture*
- *Art. 187 Rules for the association*

The following table compares the results of the presented study with the procedures proposed in the analysed areas by the draft constitution.

Table 1

Comparison of proposed extensions of QMV

Numbering (Treaty of Nice)	Included in the French proposal	Extension of QMV according to the presented study	Extension of QMV according to the draft constitution	Numbering (draft constitution)	Notes
13 (1)	no	no	no	III-5	consultation of the EP
18	yes	yes	no	III-6	consultation of the EP
19(1)	no	no	no	III-7	consultation of the EP
22	no	no	no	III-10	consent of the EP
42	yes	yes	yes	III-18	co-decision of the EP
47(2)	yes	yes	yes	III-23	co-decision of the EP
57(2)	no	yes	no	III-43	consultation of the EP
62	yes	yes	yes	chapter IV, Section2	co-decision of the EP, QMV some areas
63	yes	yes	yes	chapter IV, Section2	co-decision of the EP, QMV some areas
66	yes	ambiguous	yes	III-180	co-decision of the EP
67(5)	yes	yes	not specified ¹⁷	X ¹⁸	
71(2)	yes	yes	yes	III-129	co-decision of the EP
80	yes	yes	yes	III-138	co-decision of the EP, consultation of the ESC and the CoR
88(2)	no	yes	no	III-54	
93	yes	yes	no	III-59	consultation of the EP and the ESC; III-59(2) and III-60; possible unanimous decision about extension of QMV
94	yes	deletion or specification	no	III-61	consultation of the EP and the ESC
133	yes	yes	no	III-212(4)	QMV not possible in those areas where unanimous adoption of internal rules is required
137 (except 1c)	yes	yes	no	III-99	possible unanimous decision about extension of QMV (III-

¹⁷ This means that the new article does not mention decision-making or adoption of European laws.

¹⁸ There is no clearly corresponding article in the draft constitution.

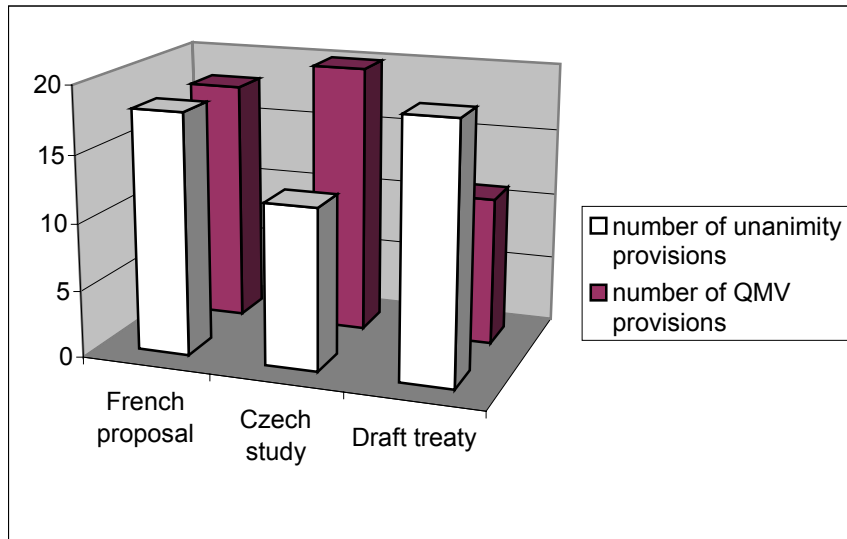
					99(3) after consulting the EP
137(1c)	no	no	no	III-99	
139	no	yes	no	III-101	unanimity in areas connected with III-99 (1) c, d, f, g.
139 (in connection with 137 (1c))	no	no	no	III-101	
151(5)	yes	irrelevant	yes	III-176	co-decision of the EP, QMV not possible in regard to harmonisation of law and regulation measures
157(3)	no	yes	yes	III-175	co-decision of the EP, consultation of the ESC and the CoR
175(2)	yes	yes	no	III-125	possible unanimous decision about extension of QMV
187	yes	irrelevant	no	III-186	
190	no	no	no	III-227	consent of the EP
213(1)	no	yes	not specified	III-245	
221	no	no	not specified	III-254	
222	no	yes	no	III-255	
225	no	no	not specified	III-259	
245	no	no	yes	III-285	on request of the ECJ after consulting the EC or on request of the EC after consulting the ECJ
269	yes	no	no	I-53	consultation of the EP
290	no	yes	no	III-335	
296(2)	no	no	no	III-338	
300	yes	ambiguous	yes	III-222	except for treaties that tackle questions for which unanimity is required; consent of the EP
308	no	yes	not specified	X	

Sources: CONFER 4776/00; CONV 802/03; Drulák, Königová, Kratochvíl, 2003

It is obvious that the Convention draft is the most moderate of the three alternatives in Table 1. The Czech position presented in the study aims at rather far-reaching QMV extension. The French proposal rejects QMV extension in eight provisions where Czech experts believe QMV would be advantageous (and there is a difference in other six provisions) (see Figure 1).

Figure 1

Comparison of the alternative proposals



When looking at the differences in the most sensitive areas, four issues should attract our greatest attention:

1. Experts from Czech Labour and Social Affairs Ministry propose extension of QMV to almost every aspect of the EU social policy: This means above all articles 42 and 137 with the sole, yet important exception of social security (137 (1)c). The Convention text is much more conservative and recommends a change only in art. 42. In some aspects of art. 137 (III-99(3)) the draft text explicitly states that QMV should remain a future possibility which should however be decided by unanimous agreement in the Council (passerelle clause). Such transition is nevertheless not possible in the most sensitive area – social security.
2. In a similar way, Czech experts support extension of QMV in the area of indirect taxation and harmonisation of related provisions. The advantages of harmonisation in the form of tax fraud prevention, simplification of tax systems and tax collection are considered to be more important than the risk of creeping tax unification which might follow the harmonisation. The draft constitution does not introduce QMV but it counts on a possible change (decided unanimously) in the field of administrative co-operation and fight against tax evasion.
1. Czech ministerial experts and officials express themselves in favour of QMV in the third contested area as well – asylum and refugees. The ČR badly needs a clear and unified definition of asylum and refugee status. The main obstacle to the unification is, according

to the experts, unanimous decision-making in the Council. More to that, a further increase in the number of refugees asking for asylum in the ČR can be expected after its accession to the EU. It is, therefore, of utmost importance to accelerate the adoption of European norms in this area which could help to share the immigration burden all over the EU.

4. Some other important articles that were examined in the study confirm, however, that Czech experts are not blindly integration-minded: There was clear consensus among them that decisions about own resources of the Union should stay unanimous. The situation in the Convention was similar: Even the strongest advocates of further integration did not propose QMV in this field. There were, however, some voices calling for super-qualified majority here (for example, three quarters of the Member States and two thirds of the population).¹⁹

Some of the results of the study may be influenced by the fact that the current Czech government is inclined to promoting deeper integration of the Continent. After a change of government, Czech national interests could be redefined in order to be compatible with the views of the new governing party (parties). This is also one of the reasons why the aim of the study was not to analyse the view of the top political representatives but rather the ministerial experts who should be more independent of political influences.

Should the current government (left wing Social Democratic Party, centrist Christian Democrats and right wing Freedom Union) be replaced by more Euro-sceptical parties (right wing Civic Democratic Party), we should expect major changes in some key areas. The changes could affect the common foreign and security policy, the social policy and also many institutional questions. Only minor or no changes could be expected in the field of asylum of refugees and other areas where the interests of the ČR stem rather from the stage of its development (cohesion policy), or its geographical position (combating international crime).

4. The ČR and the QMV mechanism

As one of its main targets, the Convention strove for greater transparency and simplicity of the EU institutions. The triple criterion agreed in Nice belonged to the infamous group of most complicated institutional solutions ever and, as such, it was totally incomprehensible to the public. This together with the need for a more “democratic” Union (which means a Union reflecting the population in each Member State and, effectively, better

¹⁹ See the contribution by A. Duff, CONV487/03, <http://register.consilium.eu.int/pdf/fr/03/cv00/cv00487fr03.pdf>

position for Germany) was the reason why most of the proposed changes endeavoured to make QMV decisions easier and simpler. The most obvious example of this trend was the already mentioned Commission proposal of double simple majority.²⁰

Although the small Member States, the European Parliament and the European Commission protested against further strengthening of the size of the Member States without offering sufficient safeguards to the smaller countries which would inevitably lose part of its voting power, the final formula in the draft constitution text tips the balance heavily towards the bigger Member States. Hereafter, a provision shall be adopted by QMV on basis of a decision by majority of Member States representing at least two thirds of the Union's population. Table 2 compares the positions of the Member States under Nice rules (population threshold and weighting votes) with the draft constitution.

Table 2²¹

Shares of blocking minority

Country	Number of inhabitants	% of the Union's population	% of blocking minority (pop. threshold, draft constitution)	% of blocking minority (pop. threshold, NT)	Voting weights (NT)	% of blocking minority (voting weights, NT, Protocol 21 ²²)
Germany	82555	17,09%	42,62%	44,86%	29	31,87%
France	59637	12,34%	30,77%	32,39%	29	31,87%
United Kingdom	59088	12,23%	30,50%	32,10%	29	31,87%
Italy	56464	11,69%	29,15%	30,68%	29	31,87%
Spain	40683	8,42%	21,00%	22,10%	27	29,67%
Poland	38609	7,99%	19,93%	20,97%	27	29,67%
Romania	22330	4,62%	11,52%	12,13%	14	15,38%
Netherlands	16195	3,35%	8,35%	8,79%	13	14,29%
Greece	11018	2,28%	5,61%	5,98%	12	13,19%
Portugal	10406	2,15%	5,36%	5,64%	12	13,19%
Belgium	10346	2,14%	5,34%	5,62%	12	13,19%
Hungary	10155	2,10%	5,24%	5,51%	12	13,19%
Czech rep.	10144	2,10%	5,24%	5,51%	12	13,19%
Sweden	8943	1,85%	4,61%	4,86%	10	10,99%
Austria	8159	1,69%	4,21%	4,44%	10	10,99%
Bulgaria	7801	1,61%	4,01%	4,23%	10	10,99%
Denmark	5388	1,11%	2,77%	2,91%	7	7,69%

²⁰ Suggestion for Amendment by Barnier et al., http://european-convention.eu.int/Docs/Treaty/pdf/417999/17terBarnier%20EN_FR.pdf

²¹ We analyse the data after the enlargement to 27 Member States.

²² Protocol 21, Treaty of Nice, http://www.evropska-unie.cz/download/cz/oficialni_dokumenty/Smlouvy_EU/Smlouva_z_Nice.pdf

Slovakia	5378	1,11%	2,77%	2,91%	7	7,69%
Finland	5207	1,08%	2,69%	2,83%	7	7,69%
Ireland	3931	0,81%	2,02%	2,13%	7	7,69%
Lithuania	3460	0,72%	1,80%	1,89%	7	7,69%
Latvia	2329	0,48%	1,20%	1,26%	4	4,40%
Slovenia	1996	0,41%	1,02%	1,08%	4	4,40%
Estonia	1355	0,28%	0,70%	0,73%	4	4,40%
Cyprus ²³	712	0,15%	0,37%	0,39%	4	4,40%
Luxembourg	449	0,09%	0,22%	0,24%	4	4,40%
Malta	396	0,08%	0,20%	0,21%	3	3,30%
total	483134	100,00%			345	

Sources: CONV 802/03, Treaty of Nice (http://europa.eu.int/eur-lex/en/treaties/dat/nice_treaty_en.pdf, 378.5 million inhabitants...,

<http://europa.eu.int/comm/eurostat/Public/datashop/printproduct/EN?catalogue=Eurostat&product=3-10012003-EN-AP-EN&mode=download>

The Czech Republic should, together with other Member and Candidate Countries, welcome the simplification of the mechanism of qualified majority compared to the rules negotiated in Nice. Similarly, from the point of transparency, Member States (current and future ones alike) should welcome the introduction of QMV together with co-decision procedure as the normal decision-making procedure which shall be applied as a default rule. The proposal has unfortunately also several disadvantages for smaller Member States.

1. Drop in blocking power thanks to abolition of voting weights

Unfortunately, it was exactly the abolished voting weights which were the main safeguard of the small countries that guaranteed their overproportional representation. It is somewhat confusing that the criterion of majority of Member States is sometimes mentioned as the criterion required by the small Member States to balance the population strength of the big States. Yet, this should be seen rather as a supplement to the main criterion of voting weights. The evidence of negotiations of the last IGC also supports this view: Every participating country paid most of its attention to gaining as much weight as possible and only afterwards the other issues were discussed. The Czech Republic had 12 votes at its disposal and its share of the smallest blocking minority was thus 13,19%. According to the draft text, the share of the ČR has shrunk to 5,28% of the smallest blocking minority (population threshold) or 7,14% (majority of Member States criterion) according to the draft constitution. Its strength to block others' decisions has undoubtedly suffered a heavy loss.

²³ The government-controlled part of the island.

Figure 2 shows that those whose blocking power lost the most were paradoxically not the small countries but (apart from Spain a Poland) the medium-sized countries.

2. Change of population threshold as a marginal disadvantage for the Big

The change of the population threshold is the only amendment slightly to big states' disadvantage. Several studies analysing QMV under the Treaty of Nice show convincingly that the advantage of more populous countries was more than compensated by other criteria.²⁴ So, Germany's advantage was rather the psychological effect of breaking the old taboo of parity among the four biggest than a practical voting advantage.

The population threshold was lowered by mere 2%, which does not have any tremendous effect on the overall situation of the Member States: The blocking potential of biggest country, Germany changes from 44,97% to 42,72% and the difference is even smaller for the others (see Table 3). To sum up, this criterion has remained largely untouched and its importance would, after the proposed abolition of the voting weights, even increase.

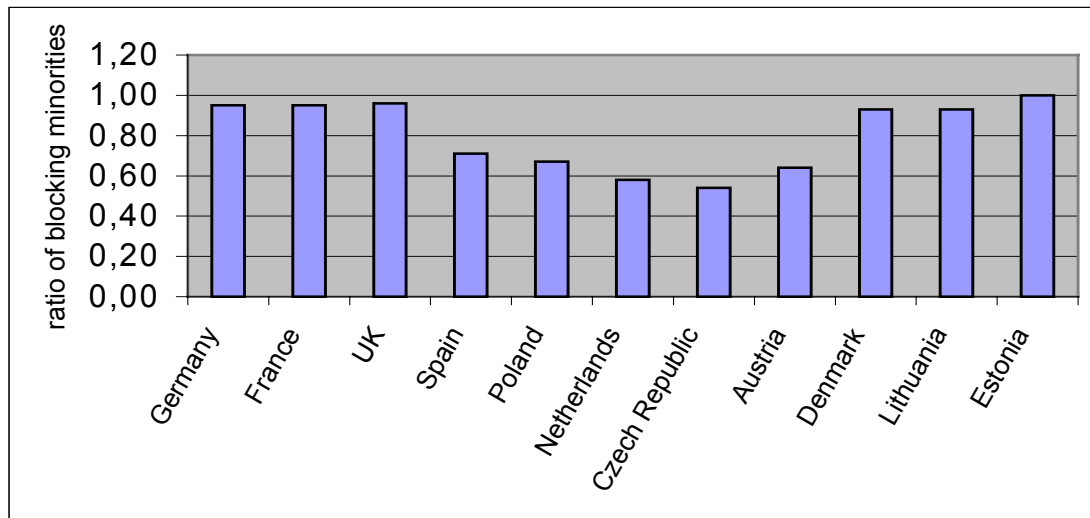
3. Majority of Member States hard to achieve in an enlarged Union

This criterion was incorporated in the draft text without any change from the Treaty of Nice. It is useful to note that, from the point of view of equality of states, it should not aim at strengthening any particular group of countries. It would be nevertheless possible to say that, considering the smaller population of the small countries, this criterion is more favourable for them than for the big countries, their much larger population having the same vote as that of the small countries. Yet, the blocking potential of the small countries should not be overestimated. The blocking potential of every state (big and small alike) is only 7,14% and the successful blocking requires at least 14 states.

²⁴ See e.g. Plechanovová, 2003

Figure 2

Ratio of blocking minorities (comparison of the Nice Treaty and the Draft Constitution)²⁵



The analysis of QMV blocking potential

As we can see above, if we do not judge the ability of a group of states to adopt a decision but rather to block an unfavourable legislative act, the advantages of the new system for the big countries and its disadvantages for the small (and especially medium) ones become evident.²⁶ Table 3 shows that various coalitions of with a sufficient blocking potential under the old rules (e.g. small candidate countries plus Poland or small less developed countries) would lose this ability with the arrival of the new system. According to the draft constitution, these coalitions are not able to reach a blocking minority in neither of the two criteria.

²⁵ Here we count the ratio between the highest blocking potential of the country as provided for in the Nice Treaty and the highest blocking potential of the same country under the new rules.

²⁶ A similar method for evaluating the pros and cons of different QMV models is used by several authors, e.g. Moberg (2002). Others use more complicated statistical analyses (Felsenthal & Machover (2000)).

Table 3*Blocking potential of coalitions*

Group of states	Population in % and the ability to block a decision	Blocking minority (draft constitution, criterion of majority of states)	Blocking potential (draft constitution)	voting weights (Nice Treaty)
G, F, UK	41,66%	no (3)	yes	87
G, F, I	41,12%	no (3)	yes	87
G, UK, I	41,01%	no (3)	yes	87
any four out of the six biggest (G, F, UK, I, S, P)	min. 40,33%	no (4)	yes	min. 112
candidate countries	21,65%	no (12)	no	108
small less developed countries (candidate states without Poland plus Portugal and Greece)	18,09%	no (13)	no	105

Sources: CONV 802/03, Treaty of Nice (http://europa.eu.int/eur-lex/en/treaties/dat/nice_treaty_en.pdf, 378.5 million inhabitants...,

<http://europa.eu.int/comm/eurostat/Public/datashop/printproduct/EN?catalogue=Eurostat&product=3-10012003-EN-AP-EN&mode=download>

The proposal of the Presidium was not the only proposal that simplified the procedure of QMV. The following table compares the Presidium proposal with two alternative proposals: The double simple majority (proposed by the EC) and the proposal incorporated in the final mandate of the Czech governmental delegate Mr. Jan Kohout which proposes another combination of the two criteria (60% of Member States representing 60% of the population).²⁷ This proposal is also supported by other small countries like Slovakia, Slovenia, Denmark or Hungary.²⁸

Table 4*Comparison of blocking power of coalitions (alternative proposals)*

Group of states	Population in %	Blocking minority (draft constitution, population threshold)	Blocking minority (draft constitution)	Blocking minority (Commission proposal)	Blocking minority (60:60)
G, F, UK	41,66%	yes	no	no	yes (41,66%)

²⁷ This proposal has not been officially published yet.

²⁸ Other „like-minded“ countries support the Commission proposal (50:50). But almost no small country is satisfied with the current ratio 60:50 (with the sole exception of Netherlands).

					pop.)
G, F, UK, I	53,35%	yes	no	yes (53,35% pop.)	yes (53,35% pop.)
G, F, UK, S	50,08%	yes	no	yes (50,08% pop.)	yes (50,08% pop.)
Other combinations of four out of the six biggest	max. 49,65%, min. 40,33%	yes	no	no	yes (min. 40,33% pop.)
Candidate countries	21,65%	no	no	no	yes (12 countries)
Small less developed countries (cand. countries – Poland + Portugal and Greece)	18,09%	no	no	no	yes (13 countries)

Sources: CONV 802/03, Treaty of Nice (http://europa.eu.int/eur-lex/en/treaties/dat/nice_treaty_en.pdf, 378.5 million inhabitants..., <http://europa.eu.int/comm/eurostat/Public/datashop/print-product/EN?catalogue=Eurostat&product=3-10012003-EN-AP-EN&mode=download>

This table clearly demonstrates that the argument of simplicity cannot be used to gain unconditional support for the Presidium proposal. The other analysed alternatives show the same amount of transparency. Both the double simple majority and the 60-60 proposal are not more complicated and their results show greater balance between the big and the small countries.

The Commission proposal makes the blocking minority of the big countries much harder to achieve: No combination of the big three or four countries, with the exceptions of two coalitions (G, F, UK, I or G, F, UK, S) is big enough to reach the required threshold of 50% of the Union's population. This is very different from the rules of the draft constitution under which any four out of the six biggest (G, F, UK, I, S, P) are able to block the others' decisions. The Commission proposal presents an even more efficient system where blocking is not an easy option for big and small countries alike. The plan was, at the same time, quite radical and this was its biggest disadvantage: It was not able to attract any supporters from the camp of bigger countries.

The proposal of the ČR is not so radical. In fact, it went in the other direction: Its aim was not to equalise the position of the small and the big Member States by removing the safeguards of the big ones but by creating a safeguard for the small (or Candidate) countries

as well. In other words, while the Commission proposal lowers the overall possibility of blocking the others, the Czech proposal increases it.

Thanks to the change of simple majority of Member States to 60% of Member States, it would be much easier for the small countries to block any unpleasant decision. The blocking minority would drop from 14 (simple majority proposal) to 11. This means both candidate states and small less developed states (candidate countries without Poland plus Portugal and Greece) would have the power to block the others.

Bearing in mind the effectiveness and transparency of Union decision-making, the Commission proposal (50:50) would probably be the best option. Yet the practical results of the negotiations of the last IGCs demonstrate that the most effective options are not always those with the widest support. The 60:60 proposal, therefore, seems to be an equally good starting point for the search for a compromise between the current draft constitutional text and the demands of the unsatisfied small countries.

4. Conclusion

I analysed two interrelated topics: The proposed extension of QMV and alternative models of QMV constitution. The general conclusion for both of them is not entirely positive from the point of view of the Czech Republic. Neither of the proposals in the draft constitution fully corresponds with the wishes of the Czech government and the Czech administrative elite:

1. On basis of the presented study, we can describe the Czech governmental experts as quite integration-minded. The list of possible extensions of QMV is, therefore, quite impressive.. This is even more glaring when compared to the changes introduced by the draft constitution. The Czech experts would, unlike the authors of the constitution, like to deepen the integration in certain aspects of social policy, harmonise issues related to indirect taxation (although not tax provision themselves), etc.
2. The constitution of QMV proposed by the draft constitution is not what small countries have required either. The QMV consisting of simple majority of Member States and 60% of the population is more favourable for big countries than the Commission's proposal of double simple majority and, at the same time, more detrimental to small member nations. On the other hands, alternative proposals (double simple majority or the proposal of 60% of population and 60% of Member States) offer the same degree of transparency with more balanced benefits for the small and the big MS. The Commission proposal, though

being probably the best option in regard to effectiveness, is too far-reaching to be accepted by the big MS. Therefore, the 60:60 proposal could be a good starting point for further search for the badly needed compromise between the big and the small.

Even if the Czech negotiators at the IGC in Rome concentrate on the Commission and the rule “one country – one Commissioner”, the question of QMV should not be altogether forgotten. In fact, if their efforts at having a full-fledged Commissioner fail (either because the number of Commissioners will not increase or because Commissioners from smaller countries will not be allowed to vote), the reform of the Council and especially the change of QMV is a remarkably good issue for small countries’ compensation.

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